



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 81**

**[EPA-R06-OAR-2016-0275; FRL-9952-67-Region 6]**

#### **Determination of Nonattainment and Reclassification of the Houston-Galveston-Brazoria 2008 8-hour Ozone Nonattainment Area; Texas**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to determine that the Houston-Galveston-Brazoria ozone nonattainment area (HGB area) failed to attain the 2008 8-hour ozone national ambient air quality standards (NAAQS) by the applicable attainment deadline of July 20, 2016, and thus is classified by operation of law as “Moderate”. In this action, EPA is also proposing January 1, 2017 as the deadline by which Texas must submit to the EPA the State Implementation Plan (SIP) revisions that meet the CAA statutory and regulatory requirements that apply to 2008 ozone NAAQS nonattainment areas reclassified as Moderate.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2016-0275, at <http://www.regulations.gov> or via email to [salem.nevine@epa.gov](mailto:salem.nevine@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Nevine Salem, (214) 665-7222, [salem.nevine@epa.gov](mailto:salem.nevine@epa.gov).

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Ms. Nevine Salem, (214) 665-7222, [salem.nevine@epa.gov](mailto:salem.nevine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

In 2008 we revised the 8-hour ozone primary and secondary NAAQS to a level of 0.075 parts per million (ppm) annual fourth-highest daily maximum 8-hour average concentration, averaged over three years to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008). The HGB area was classified as a “Marginal” ozone nonattainment area for the 2008 8-hour ozone NAAQS and initially given an attainment date of

no later than December 31, 2015 (77 FR 30088, May 21, 2012). The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

On December 23, 2014, the D.C. Circuit issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464-69 (D.C. Cir. 2014). Consistent with the court's decision we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS, and set the attainment deadline for all 2008 ozone nonattainment areas, including the HGB area as July 20, 2015 (80 FR 12264, March 6, 2015). As the HGB area qualified for a 1-year extension of the attainment deadline we revised the attainment deadline to July 20, 2016 (81 FR 26697, May 4, 2016).

Classifications for ozone nonattainment areas range from "Marginal" (for areas with monitored ozone levels just exceeding the level of the NAAQS) to "Extreme" (for areas with monitored ozone levels well above the levels of the NAAQS). CAA section 182 stipulates the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementation regulations at 40 CFR 51.1108-1117, also establishes the timeframes by which air agencies must submit SIP revisions to address the applicable attainment planning elements, and the timeframes by which ozone nonattainment areas must attain the relevant NAAQS.

CAA section 181(b)(2) requires us to (1) determine whether the HGB area attained the 2008 ozone NAAQS by the attainment deadline, (2) reclassify the HGB area if the attainment deadline is not met, and (3) publish a Federal Register notice within 6 months of the attainment deadline identifying the new classification if the area failed to attain by the attainment deadline.

The determination of attainment is based on the area's "design value" (DV), which for the 8-hour ozone NAAQS is the highest 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration of all regulatory monitors in the area. The 2008 ozone NAAQS is met when the DV is less than or equal to 0.075 ppm based on complete, consecutive calendar years of certified, quality assured ambient air monitoring data (40 CFR 50.15; 40 CFR 50, appendix P). A determination of attainment by the attainment deadline of July 20, 2016 is based on data from the consecutive calendar years of 2013-2015.

## **II. EPA Analysis**

Ozone air quality data from monitoring sites in the HGB area is presented in Table 1. This data has been quality assured and certified by the State of Texas. The data is available in the EPA Air Quality System (AQS) database and also in the electronic docket for this action. The Manvel monitoring site (48-039-1004) recorded the highest 2013-2015 design value (0.080 ppm), which is also the DV for the area. Although the HGB air trends show overall progress in reducing ozone concentrations over the past 15 years, the HGB area is not eligible for an additional one-year attainment date extension<sup>1</sup> because, at 0.078 ppm, the average of the 2014 and 2015<sup>2</sup> annual fourth highest daily maximum eight-hour average ozone concentrations for the monitor in the area is greater than 0.075 ppm, the data for 2014-2015 indicates the area does not qualify for a second 1-year extension of the attainment deadline (40 CFR 51.1107).

---

<sup>1</sup> The area would be eligible for the second 1-year extension if the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is at or below 0.075 ppm.

<sup>2</sup> 2014 and 2015 are the last two full years of complete air quality data prior to the July 20, 2016, attainment date

Table 1: HGB Area Fourth Highest 8-hour Ozone Concentrations and Design Values (ppm), 2013-2015

Site Name and Number	4 <sup>th</sup> Highest Daily Maximum Value			Design Value (2013-2015)
	2013	2014	2015	
Garth (48-201-1017)	0.061	0.067	0.077	0.068
Deer Park (48-201-1039)	0.069	0.063	0.077	0.069
Aldine (48-201-0024)	0.074	0.068	0.095	0.079
Clinton Drive (48-201-1035)	0.067	0.058	0.084	0.069
Croquet (48-201-0051)	0.079	0.067	0.079	0.075
Monroe (48-201-0062)	0.074	0.065	0.073	0.070
NW Harris Co. (48-201-0029)	0.080	0.063	0.078	0.073
Westhollow (48-201-0066)	0.077	0.070	0.079	0.075
Lang (48-201-0047)	0.079	0.064	0.091	0.078
Wayside (48-201-0046)	0.070	0.062	0.078	0.070
Houston East (48-201-1034)	0.069	0.066	0.088	0.074
Bayland Park (48-201-0055)	0.081	0.067	0.080	0.076
Seabrook (48-201-1050)	0.067	0.065	0.083	0.071
Channelview (48-201-0026)	0.061	0.064	0.081	0.068
Lynchburg (48-201-1015)	0.064	0.059	0.079	0.067
Park Place (48-201-0416)	0.079	0.066	0.087	0.077
Galveston (48-167-1034)	0.064	0.071	0.084	0.073
Conroe (48-339-0078)	0.075	0.072	0.073	0.073
Manvel (48-039-1004)	0.084	0.071	0.086	0.080
Lake Jackson (48-039-1016)	0.067	0.061	0.065	0.064

CAA section 181(b)(2)(A) provides that a marginal nonattainment area shall be reclassified by operation of law upon a determination by the EPA that such area failed to attain the relevant NAAQS by the applicable attainment date. Based on quality-assured ozone monitoring data from 2013–2015, as shown in Table 1, the new classification applicable to the HGB area would be the next higher classification of “moderate” under the CAA statutory scheme. Moderate nonattainment areas are required to attain the standard “as expeditiously as practicable” but no later than six years after the initial designation as nonattainment (which, in the case of the HGB area, is July 20, 2018). The attainment deadlines associated with each classification are prescribed by the CAA and codified at 40 CFR 51.1103.

In determining the deadline for the Moderate area SIP revisions, the EPA has discretion, per CAA section 182(i), to adjust the statutory deadline for submitting required SIP revisions for reclassified Moderate ozone nonattainment areas. CAA section 182(i) requires that reclassified areas meet the applicable plan submission requirements “according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” Under the Moderate area plan requirements of CAA section 182(b)(1) and 40 CFR 51.1108, states with ozone nonattainment areas classified as Moderate are provided 3 years (or 36 months) from the date of designation to submit a SIP revision complying with the Moderate ozone nonattainment plan requirements. For areas designated nonattainment for the 2008 ozone NAAQS and originally classified as Moderate, that deadline was July 20, 2015, a date that has already passed.

The EPA, therefore, interprets CAA section 182(i) as providing the authority to adjust the applicable deadlines for the HGB area “as necessary or appropriate to assure consistency among the required submissions.” In determining a SIP submission deadline, we note that pursuant to 40 CFR 51.1108(d), for each nonattainment area the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area’s attainment date, in this case it is the 2017 ozone season (40 CFR 51.1100(h)). The ozone season is the ozone monitoring season as defined in 40 CFR part 58, appendix D, section 4.1, table D-3. For the purpose of this HGB area reclassification, January 1<sup>st</sup> is the beginning of the ozone monitoring season. Therefore, the beginning of the Moderate attainment year ozone season for the HGB area is January 1, 2017. This date is also the latest

date that would be compatible with the deadline for Moderate area reasonably available control technology (RACT) to be in place (i.e., begin no later than January 1 of the 5th year after the effective date of designation for the 2008 ozone NAAQS, which is, in this case, January 1, 2017).<sup>3</sup> Also, January 1, 2017 is the SIP submission deadline the EPA established for all other Marginal nonattainment areas in the country that were recently reclassified to Moderate.<sup>4</sup>

Accordingly, the EPA proposes that the required SIP revisions be submitted by Texas no later than January 1, 2017. This deadline also calls for implementation of applicable controls no later than January 1, 2017. Texas must submit a Moderate Area SIP that addresses the CAA's Moderate nonattainment area requirements as described in 40 CFR 51.1100. Those requirements include, (1) An attainment demonstration (CAA section 182(b) and 40 CFR 51.1108); (2) reasonable further progress (RFP) reductions in volatile organic compound (VOC) and nitrogen oxide (NO<sub>x</sub>) emissions (CAA sections 172 (c)(2) and 182(b)(1) and 40 CFR 51.1110); (3) provisions for reasonably available control technology (RACT) (CAA section 182(b)(2) and 40 CFR 51.1112(a)-(b)) and reasonably available control measures (RACM) (CAA section 172(c)(1) and 40 CFR 51.1112(c)); and (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)); (5) a vehicle inspection and maintenance program( CAA section 181(b)(4) and 40 CFR 51.350); and (6) NOX and VOC emission offsets at a ratio of 1.15 to 1 for major source permits (CAA section 182(b)(5) and 40 CFR 51.165 (a)) See also the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b) and the general nonattainment plan provisions required under CAA section 172(c).

---

<sup>3</sup> See 40 CFR 51.112(a)(3)

<sup>4</sup> See 81 FR 26697, May 4, 2016

Should the State's analysis find that the area will not meet the Moderate area attainment deadline of July 20, 2018, the State can seek a voluntary reclassification to a higher classification category, which would provide additional time for attainment. We believe that voluntary reclassification for areas that are not likely to attain by their attainment date is an appropriate action that will facilitate focus on developing the attainment plans required (80 FR 12264, 12268, March 6, 2015). A voluntary reclassification to the Serious classification would set an attainment deadline of July 20, 2021 (40 CFR 51.1103).

### **III. Proposed Action**

In accordance with CAA 181(b)(2), we are proposing to determine that the HGB ozone nonattainment area failed to attain the 2008 ozone NAAQS by the applicable attainment deadline of July 20, 2016, and to reclassify the area as Moderate. We are also proposing that Texas must submit to us the SIP revisions to address the Moderate ozone nonattainment area requirements of the CAA by January 1, 2017.

The EPA acknowledges that for the HGB area reclassified from Marginal to Moderate nonattainment, meeting the SIP submittal deadline of January 1, 2017 may be challenging. The EPA is working closely with TCEQ to support their SIP submittal in a timely manner. As discussed previously in section II of this notice, January 1, 2017 is a SIP submission deadline that is consistent for all Marginal nonattainment areas that are reclassified to Moderate for the 2008 ozone NAAQS, and is consistent with the timeframes in the CAA as codified in the EPA's implementing regulations.

### **IV. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*



This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

*B. Paperwork Reduction Act (PRA)*

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to determine that the HGB area failed to meet an ozone NAAQS attainment deadline, reclassify the area and set the date when a revised SIP is due to EPA.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to determine that the HGB area failed to meet an ozone NAAQS attainment deadline, reclassify the area and set the date when a revised SIP is due to EPA.

*H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to determine that the HGB area failed to meet an ozone NAAQS attainment deadline, reclassify the area and set the date when a revised SIP is due to EPA.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 21, 2016.

**Ron Curry,**

*Regional Administrator, Region 6.*

**BILLING CODE 6560-50-P**

[FR Doc. 2016-23247 Filed: 9/26/2016 8:45 am; Publication Date: 9/27/2016]